No. 91-1376

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

CHURCH OF SCIENTOLOGY INTERNATIONAL, et al.,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, et al.,
Respondent.

v.

DAVID MAYO, et al.,
Real Parties In Interest.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the court of appeals deny petitioners' petition for writ of mandamus solely on the ground that mandamus review of a denial of a motion for recusal is uniquely unavailable in the Ninth Circuit?

2. Did the court of appeals properly apply a "clearly erroneous as a matter of law" standard as one of its guidelines when reviewing by way of mandamus the district court's order denying petitioners' motion for recusal?

3. Did the court of appeals properly conclude that the district court's order denying recusal on the alleged grounds that either the district court judge's "impartiality might reasonably be questioned" 28 U.S.C. § 455(a), or that "he has a personal bias or prejudice concerning [petitioners]" 28 U.S.C. § 455(b)(1), was not "clearly erroneous?"

PARTIES AND PROCEEDINGS BELOW AND RULE 29.1 LIST

The United States District Court for the Central District of California is a Respondent in this Court and was the respondent below.

Vicki J. Aznaran; Richard N. Aznaran; United States of America; Sandra Baker; Baldemar Gomez; Charles Jeglikowski; Sherrill Fields; David Mayo; Robin Scott; Adrienne Scott; Ron Lawley; Morag Bellmaine; Steven Bisbey; Advanced Ability Center Candacraig; Advanced Ability Center East Grinstead; Church of the New Civilization; Harvey Haber; John Nelson; Vivian Zegel; Diana Reisdorf; and Richard Ofshe are respondents in this Court and were real parties in interest in the court below.

Petitioners in this Court and in the court of appeals are Church of Scientology International; Church of Scientology of California; Religious Technology Center; and Church of Spiritual Technology.

Real Parties In Interest herein have no parent companies, subsidiaries or affiliates to list pursuant to S.Ct. Rule 29.1.

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Real Parties In Interest, David Mayo, Church of the New Civilization, Harvey Haber, John Nelson, Vivian Zegel and Diana Reisdorf,[1] oppose the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit filed by the petitioners herein.

[1]Parties to consolidated cases *Religious Technology Center, Inc., et al. v. Robin Scott, et al.*, No. CV 85-711 (JMI), and *Religious Technology Center et al. v. Larry Wollersheim, et al.*, No. CV 85-7197 (JMI) (hereinafter collectively referenced to as "*Scott*").

OPINIONS BELOW

The order of the court of appeals denying the petitioners' petition for a writ of mandamus (1a-2a) is unreported. The denial of the petition for rehearing and suggestion for rehearing en banc (3a) is unreported. The November 22, 1991 order of the district court denying the motions to recuse (4a) is unreported; there is a transcript of the predicate hearing (8a-33a) during which the district court issued its oral decision.

JURISDICTION

The order of the court of appeals was filed on December 4, 1991 (1a). The denial of the petition for rehearing was filed on January 30, 1992 (3a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 455(a) provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. § 455(b)(1) provides: "He shall also disqualify himself in the following circumstances: (1) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings."

28 U.S.C. § 1651(a) provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT OF THE CASE

1. Petitioners' Real Motive For Filing Their Motion For Recusal

On August 12, 1991, the Honorable James M. Ideman denied petitioners' motion for review of the Honorable (Special Master) James G. Kolts' second Discovery Order, dated August 25, 1990, and ordered petitioners to comply with all outstanding discovery ordered by the Special Master. The district court noted at the time that:

> In the present case, Plaintiffs have been extremely evasive with respect to their discovery obligations. This [motion for review] appears to be yet another tactic utilized by Plaintiffs to delay the progress of this case which was first filed in 1985. Moreover, Plaintiffs are already in violation of several Court Orders which have directed that Plaintiffs respond to Defendants' pending discovery requests. In fact, discovery responses by Plaintiffs in this case have either been incomplete or inadequate.

(Order, dated 8/12/91) (6a-7a).

From that point forward, petitioners intensified their efforts to delay and obstruct the forward progress of this case, while they attempted to disqualify the district court and the Special Master. To that end, on September 24, 1991, petitioners filed a motion to recuse the district court and the Special Master, which was denied on October 25, 1991. Petitioners' petition for a writ of mandamus to the Ninth Circuit Court of Appeals was denied on December 4, 1991, as was the petition for rehearing and application for rehearing *en banc* on January 30, 1992.

In the interim, on January 22, 1992, real parties in interest filed a motion to dismiss petitioners' cases pursu-

ant to Rule 37 of the Federal Rules of Civil Procedure on the grounds that petitioners had willfully failed to comply with court discovery orders, destroyed and/or concealed evidence essential to real parties in interests' defense, and generally frustrated and obstructed the course of discovery, irreparably prejudicing real parties in interests' ability to obtain a fair trial and impeding the orderly administration of justice. That motion was granted by the Special Master on April 17, 1992.

2. The Alleged Bias Upon Which Petitioners' Motion Is Based In The *Scott* Case

Petitioners refer to two grounds upon which they seek recusal of the district court and Special Master in the *Scott* case. The alleged presence of a framed copy of the cover of a *Time* magazine edition which contains an article about Scientology hung somewhere in the staff's offices of the district court's chambers, and the district court's and Special Master's admonishing remarks in response to the discovery that petitioners were using a court reporting firm in the *Scott* case which, unknown to the district court or real parties in interest, was owned by Scientologists who were major financial contributors to the International Association of Scientologists' "war chest" used to fund, *inter alia,* petitioners' legal expenses.

Based upon these allegations, petitioners concluded that both the district court and the Special Master were biased and prejudiced against petitioners and filed a motion for recusal under *both* 28 U.S.C. § 455(a) and § 455(b)(1).[2]

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[2]Petitioners had previously sought to vacate the district court's referral to the Special Master which was denied. In their petition for a writ of mandamus to the Ninth Circuit Court of Appeals (also

3. The Order Denying Recusal

The motion seeking recusal was not heard by the district court judge presiding over the *Scott* case (Judge Ideman), but rather, pursuant to the General Orders of the Central District, by another district court judge (the Honorable J. Spencer Letts). After full briefing, Judge Letts conducted a hearing on October 25, 1991, and concluded, notwithstanding petitioners' inflammatory rhetoric and provocative conduct at the hearing, that there was no legitimate basis for recusal.[3] Subsequently, the court of appeals for the Ninth Circuit concluded that the district court's order denying recusal was not clearly erroneous and any alleged harm was correctable on appeal, and denied petitioners' petition for a writ of mandamus.

In so doing, the Ninth Circuit did not apply an aberrational approach "in conflict with nine other circuit courts." Rather, the opinion rendered was accurate and correct. Moreover, not only was the right result reached

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subsequently denied) the petitioners argued that the entire Central District's "policy" toward petitioners was suspect:

> "Plaintiffs are being done in by Judge Ideman, Special Master Kolts and the unwritten special rules for Scientology entities in the Central District of California."

(Plts.' Reply Memo., 5/22/90, at 25).

[3]At that hearing, petitioners' counsel engaged in what the district court characterized as "flagrant misconduct." Not only were United States Marshals called to escort one of the petitioners' counsel from the courtroom (before the Marshals arrived, however, counsel exited the courtroom), but also, one of petitioners' senior executives attempted to address the district court and, when he refused to stop after it was learned he was not an attorney, had to be removed from the courtroom by the Marshals (14a; 24a-25a).

in accordance with existing cases, but it was the fair result under the circumstances of this case.

Nonetheless, the petition now on file is predicated (at least initially) upon the proposition that:

> *Only* the Ninth Circuit now takes the view that the theoretical availability of post judgement appeal from the denial of a motion to recuse is sufficient grounds to deny a petition for mandamus. (Emphasis added).

(*See* Pet. at 15).

This so-called "split among the circuits" as to the availability of mandamus to review the trial court's denial of a recusal motion, however, is wholly illusory and has been invented by petitioners as part of a calculated effort to elevate petitioners' request for a writ of certiorari to one of national significance. However, contrary to petitioners' assertion, a review of applicable authorities reveals that the Ninth Circuit has for over the past forty years consistently and expressly recognized mandamus as an available remedy to review a trial court's denial of a recusal motion. To that end, the language of the judgment below plainly indicates petitioners' mandamus request to the court of appeals was fully reviewed and, thereafter, denied *on the merits* for failing to demonstrate valid grounds for the recusal of the trial court and Special Master before whom these consolidated cases have been pending for the past two and one half years.

Accordingly, in the alternative, the petitioners concede that the court of appeals may have afforded full mandamus review to the district court's denial of the recusal motion, but assert the standard of review afforded by the appellate court was also inconsistent with the recusal standards required by the Supreme Court and followed by

other circuits (*see* Pet. at 24); and that the district court initially failed to apply the correct legal standard when determining that recusal was inappropriate (*see* Pet. at 27).

Nevertheless, petitioners' "standard of review" and "erroneous legal standard" arguments, which, by their own terms, require them to jettison their initial "unavailability" argument, are equally specious. The Ninth Circuit's "clearly erroneous" test on review is applied in a flexible and time-tested manner. So, too, is the objective analysis test (*i.e.*, to justify recusal there must be a showing of bias or prejudice stemming from an extrajudicial source) employed by the district court in the underlying recusal motion. Both comply with long-standing precedent. As a result, petitioners' two-pronged attempt to create a split-among-the-circuits as an antecedent to the Supreme Court's exercise of its certiorari jurisdiction must fail.

REASONS FOR DENYING THE PETITION

I.

THERE IS NO SPLIT AMONG THE CIRCUITS; IN THE NINTH CIRCUIT MANDAMUS IS AVAILABLE IN APPROPRIATE CASES TO REVIEW THE DENIAL OF A MOTION FOR RECUSAL

A. The Availability Of Mandamus Review/The *Bauman* Test

As a starting point for their legal analysis, petitioners refer to the general availability of extraordinary writs (i.e., including mandamus) pursuant to the All Writs Statute, 28 U.S.C. § 1651, and the advent of the concept of

"supervisory mandamus" set forth in *LaBuy v. Howes Leather Company*, 352 U.S. 249 (1957).

Petitioners then argue that the failure of the trial judge to recuse himself when "his impartiality might reasonably be questioned," pursuant to 28 U.S.C. § 455(a), constitutes "a clear abuse of discretion and conduct amounting to a usurpation of judicial power." (*See* Pet. at 14). In such circumstances, petitioners submit that the only effective and meaningful way to prevent damage to the judicial system and to the litigants from an "improperly denied" recusal motion is by providing immediate and plenary review by means of writ of mandamus. Finally, petitioners attribute the denial of their request for mandamus relief herein "primarily, if not exclusively on the ground that mandamus review is unavailable" within the Ninth Circuit to review a district court's denial of a recusal motion. (See Pet. at 15, citing *In re Cement Antitrust Litigation (MDL 296)*, 688 F.2d 1297 (9th Cir. 1982)).

However, mandamus review is not unavailable. To reach this conclusion it is necessary only to review the general availability of extraordinary writs and the nature of the showing required to merit issuance of extraordinary relief via mandamus. In *Bauman v. United States District Court*, 557 F.2d 650, 653 (9th Cir. 1977) the appellate court recognized that one of the most significant challenges then facing the federal appellate courts centered on the proper use of the wide-ranging power to issue extraordinary writs pursuant to the All Writs Statute and/or the use of "supervisory mandamus" to review proceedings before the trial courts.[4]

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[4]Additionally, the *Bauman* court specifically noted the danger of unprincipled use of the review mechanisms inherent in the consideration of extraordinary writs (e.g., subversion of the policies underlying the finality rule, 28 U.S.C. § 1291, or the limited congressional

Cognizant of the policy considerations militating in favor of appellate court restraint as necessary to promote a harmonious relationship between the federal appellate and trial courts (see fn.4, *supra*), the *Bauman* court looked to prior decisions of this Court for guidance. In *Kerr v. United States District Court,* 426 U.S. 394, 402 (1976), this Court held that the *issuance* of writs of mandamus to a lower court was essentially a drastic remedy and therefore properly used only in *extraordinary situations:*

> to confine an inferior court to lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it has a duty to do so. *Only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy.* (Emphasis added).

Based on these important policy considerations, the Ninth Circuit in *Bauman, supra,* 577 F.2d at 654-655, proceeded to formulate five specific guidelines to be considered in determining the appropriateness of the issuance of general mandamus relief:

> (1) The petitioner (party seeking the writ) has no other adequate means, such as a direct appeal, to obtain the relief he or she desires (citing, *inter alia, Kerr, supra*).
>
> (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is

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scheme governing interlocutory appeals, 28 U.S.C. § 1292, as well as the delicate relationship between federal trial and appellate courts predicated on mutual respect of this conduct of their respective proceedings). In particular, the court identified a pressing need to "*formulate objective principles to guide the exercise of their section 1651 power.*" (Emphasis added). *Bauman, supra,* 577 F.2d at 653.

closely related to the first) (citing *Arthur Young & Co. v. United States District Court*, 549 F.2d 686, 692 (9th Cir. 1977)).

(3) The district court's order is clearly erroneous as a matter of law (citing, *inter alia, Arthur Young, supra*).

(4) The district court's order is an oft-repeated error or manifests a persistent disregard of federal rules (citing, *inter alia, LaBuy v. Howes Leather Company, supra*).

(5) The district court's order raises new and important problems or issues of law of first impression (citing, *inter alia, Schlagenhauf v. Holder*, 379 U.S. 104 (1964)).

Although the enumerated guidelines were formulated as helpful to the exercise of judicial discretion inherent in granting or denying requests for mandamus relief, the *Bauman* court cautioned that the facts in any particular case would raise questions of degree (as to the extent a particular factor is present), and rarely, if ever, would a case arise where all the guidelines point in the same direction or even when each guideline is relevant or applicable. Thus, the considerations are cumulative and proper consideration will often require a balancing of conflicting indicators. *See Bauman, supra*, 577 F.2d at 655; *see also, In re Cement, supra*, 688 F.2d at 1301.

With this in mind, petitioners' argument as to the ostensible unavailability of mandamus to review the denial of a recusal motion is wide of the mark in no less than three fundamental respects. First, a review of the language and the holding in *In re Cement, supra* (the only Ninth Circuit authority cited in petitioners' proffered legal analysis) reveals that in that case the Ninth Circuit

specifically *approved* mandamus as a proper remedy to review the *granting* of a recusal motion and did not hold, as asserted by petitioners, that mandamus review is unavailable where the recusal motion is *denied*. Secondly, a review of applicable Ninth Circuit authorities, decided both before and after *In re Cement*, undeniably establishes the general availability of mandamus to review the *denial* of a recusal motion and/or motions to disqualify the trial court on the grounds of prejudice and/or bias. Thirdly, even as petitioners themselves must concede, the specific language of the Ninth Circuit's judgment herein indicates the petition for mandamus was both fully considered and, thereafter, denied *on the merits*.

B. The Application Of The *Bauman* Test In The Context Of Mandamus Review Of Recusal Motions

1. The *In Re Cement* Decision

Initially, petitioners suggest the *holding* of *In re Cement, supra*, stands for the proposition that "an order *denying* a motion for disqualification is reviewable on appeal after final judgment" thereby "rendering the exercise of [Ninth Circuit] . . . mandamus authority inappropriate" (emphasis supplied). (Pet., at 16). Petitioners misconstrue *In re Cement* in several respects.

First and foremost, petitioners' argument runs afoul of the actual holding of the case. *In re Cement* considered the review of a trial court's *granting* of a motion for recusal and held review of the order by mandamus was *proper*.[5] As a result, the language from which petitioners

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[5]*In re Cement* is inapposite to petitioners' argument to the extent the court did *not* consider a trial court's *denial of a recusal motion*. To the contrary, the trial court *granted* the recusal motion when it

strain to construct their theory as to the unavailability of mandamus for review of a *denial* of a recusal motion is clearly *dicta.*[6] Not only does the language quoted by petitioners *not* represent the *holding* of the court as petitioners inaccurately indicate (*see,* Pet., at 15: "the court *held* in . . .") but rather, consists of an observation about the decisions of *other* circuits. (*In re Cement, supra,* 688 F.2d at 1302).

Setting aside petitioners' misinterpretation of the appellate court's holding, it is clear the *In re Cement* court carefully applied the detailed factor-by-factor review of the mandamus petition pursuant to the analysis suggested by *Bauman* and, thereafter, determined the grant of mandamus review was *proper.* (In other words, the petition was considered *on the merits*).[7]

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appeared that the trial judge's wife held a financial interest which, in the context of the litigation, could be considered to raise the appearance of impropriety. The adverse party, seeking to retain the trial judge, initially sought review of the order *granting* recusal by interlocutory appeal, and upon its denial, by means of a writ of mandamus.

[6]In the words of the court:

> "While it is true that an order *denying* a motion for recusal might at some later time become the subject of the appeal, it would be contrary to the interest of the orderly judicial administration to delay resolution of the important question before us in order to await the occurrence of such a possibility." (Emphasis added).

In re Cement, supra, 688 F.2d at 1305.

[7]In considering the first two *Bauman* criteria, the court noted it had previously denied petitioner's request to review the order of recusal pursuant to appeals under 28 U.S.C. § 1291 (direct appeal of collateral order), and 28 U.S.C. § 1292(b) (discretionary interlocutory appeals). *In re Cement, supra,* 688 F.2d at 1301.

The detailed review of the *Bauman* factors and the appellate court's ultimate granting of mandamus relief in *In re Cement* belie petitioners' assertion that *In re Cement* precludes the availability of mandamus in the context of the denial of a recusal motion. Petitioners' efforts to limit such relief only to the granting of recusal is simply unavailing especially when numerous other Ninth Circuit cases have granted mandamus to review a *denial* of a recusal motion.

2. Other Ninth Circuit Decisions Involving Mandamus Review Of Denial Of Recusal Motions

Petitioners' arguments notwithstanding, where the circumstances of an individual case so require, the Ninth Circuit has expressly and unequivocally authorized use of mandamus relief to review *denial of recusal* motions before the trial court:

> Parties aggrieved by the trial court's refusal to order disqualification are not wholly without an interlocutory remedy. In the exceptional case, where the issue of disqualification appears to be a significant one, the court may consider the motion to disqualify upon a petition for a writ of mandamus.

United States v. State of Washington, 537 F.2d 1121 (9th Cir. 1978). *See also, Gladstein v. McLaughlin*, 230 F.2d 762 (9th Cir. 1955) (writ of mandamus proper remedy for asserting trial judge's personal bias and prejudice against attorney practicing before Circuit); *Connelly v. U.S. District Court*, 191 F.2d 692 (9th Cir. 1951) (writ of mandamus proper remedy to assert prejudice of trial court as to members of the Communist Party); *United States v. Conforte*, 457 F.Supp. 641, 651 (1978), *aff'd*, 624 F.2d 869 (9th Cir.), *cert. denied*, 449 U.S. 1012 (1980) (28 U.S.C. § 455 motions for recusal

may be "... asserted by a party to an action by means of a motion in the trial court, *by mandamus,* or on appeal" (emphasis supplied)).

Petitioners' attempt to conjure up a split-among-the-circuits as to the availability of mandamus review of the denial of recusal motion is not only unsupported by case law, but rather, is expressly *refuted* by the repeated holdings of the Ninth Circuit during the past half-century.

3. The Order Denying Mandamus Herein

The judgment of the Ninth Circuit herein provides as follows:

> While reasonable minds might draw different inferences from the facts alleged in the motion for recusal, the court finds that the District Court's order denying recusal was not clearly erroneous, and further that the harm alleged in the petition is correctable on appeal. *See, Bauman v. United States District Court,* 557 F.2d 650 (9th Cir. 1977); *In re Cement Antitrust (MDL 296),* 699 [sic] F.2d 1297, 1302 [9th Cir. 1982]. Accordingly, the petition for writ of mandamus is denied. The motion to stay is denied as moot (1a-2a).

Even as petitioners themselves are forced to concede (see Pet., at 24, "Assuming the Court Below Engaged in Substantive Review ..."), a reasonable interpretation of the appellate court's language is that the petition for mandamus was considered *on the merits,* and was denied as a result of petitioners' failure to demonstrate the trial court's order was clearly erroneous and that any harm alleged in the petition could not be adequately asserted

on appeal, pursuant to the *Bauman* analysis. (*See also*, Pet., at 15, fn.13).[8]

II.

IN THE CONTEXT OF A PETITION FOR WRIT OF MANDAMUS, THE COURT OF APPEALS PROPERLY APPLIED AS ONE OF ITS GUIDELINES A "CLEARLY ERRONEOUS" STANDARD OF REVIEW OF THE DISTRICT COURT'S ORDER DENYING RECUSAL

Confronted with Ninth Circuit precedent directly authorizing review of the denial of a recusal motion pursuant to a petition for writ of mandamus, *and* the express language of the Ninth Circuit's order demonstrating that such a review was afforded to the petitioners herein, petitioners proceed with a fall-back position. Thus, assuming the Ninth Circuit *did* reach the merits of the petition for mandamus herein (and, *a fortiori*, the petitioners' first argument was baseless), petitioners also complain the "standard" utilized by the Ninth Circuit to review a trial court's denial of a recusal motion is, once again, inconsistent with this Court's decisions and the standards of other circuits (Pet., at 24).[9] As with the

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[8]Given the demonstrable availability of mandamus review within the Ninth Circuit as to orders denying recusal of the trial court and the lack of any apparent conflicts with such relief afforded by the other circuits, Respondents will not further comment on petitioners' lengthy, but entirely unnecessary, survey of this area of the law within the other circuits.

[9]The focus of petitioners' second argument seems to be that the *appellate court* applied an erroneous standard to the trial court's denial of the underlying recusal motion as opposed to the assertion the trial judge to whom the recusal motion was referred failed to apply the proper standard *initially*.

alleged "unavailability" argument, petitioners' attribution of a special recusal review standard in the Ninth Circuit is the byproduct of their failure to cite applicable authority, rather than a demonstrable split-of-authority among the various circuits.

A writ of mandamus is a drastic remedy available only in extraordinary situations. *Kerr v. United States, supra.* A party seeking such relief carries the heavy burden of demonstrating that he has "no other adequate means to attain the relief he desires" and that his right to such relief is "clear and undisputable." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980).

Courts have demonstrated a reluctance to issue writs of mandamus lest it be exploited to "subvert the policies underlying the finality rule 28 U.S.C. § 1291, or the carefully limited congressional scheme governing interlocutory appeals, 28 U.S.C. § 1292." *Bauman, supra*, 557 F.2d at 653.

In determining whether mandamus review was available to petitioners for the denial of a recusal motion, the court of appeals applied the multi-factor *Bauman* test. If nothing else, the *Bauman* test is characterized by its intended flexibility. No one factor is controlling, not all factors are present in every case, and a proper disposition will often require a balancing of conflicting indicators. *Id.* at 655.

In the case below, one of the factors cited by the court of appeals was whether the district court's order was "clearly erroneous." The requirement is based upon the court of appeals' recognition of its role in not interfering with the district court's control over litigation pending before it:

> In the normal run of cases, it would be counter-productive for appellate courts to interfere when 'the most that could be claimed is that the district courts have erred in ruling on matters within their jurisdiction,' *Schlagenhauf*, 379 U.S. at 112, 85 S.Ct. at 239 (quoting *Parr v. United States*, 351 U.S. 513, 520, 76 S.Ct. 912, 917, 100 L.Ed. 1377 (1956)).

In re Cement, supra, 688 F.2d at 1307. Nevertheless, if other factors are present, such as "a question of law of first impression, the resolution of which would have a substantial effect on the orderly and efficient administration of the courts" the court of appeals "might issue [a] writ even were we simply to conclude that the district court was in error." *Id.*

Accordingly, had the court of appeals determined that the district court's order denying recusal otherwise justified the extraordinary application of mandamus review, the requirement of a "clearly erroneous" order would not have prevented it from doing so.

However, the court of appeals did not conclude that departure from this general guideline was appropriate. Petitioners, nevertheless, characterize the court of appeals reliance on this standard of review as "idiosyncratic" and "insurmountable." As just seen, it is not insurmountable, and as shall now be seen, neither is it idiosyncratic.

In *In re Benedictin Products Liability Litigation*, 749 F.2d 300 (6th Cir. 1984) the court of appeals for the Sixth Circuit approvingly cited and applied the *Bauman* analysis and granted a writ of mandamus in response to a district court order it found to be "clearly erroneous." In that decision, the court of appeals noted:

> The guidelines outlined in *Bauman* are based on an extensive review of applicable Supreme Court precedent and Ninth Circuit case law. Although the Supreme Court has considered the proper use of the writ of mandamus on two occasions since *Bauman*, *Allied Chemical Corp. v. Daiflon Inc.*, 449 U.S. 33, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980); *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 98 S.Ct. 2552, 57 L.Ed.2d 504 (1978), neither of those cases suggest that the guidelines utilized in *Bauman* are no longer appropriate.

In Re Benedictin, supra, 749 F.2d at 303, fn.7.[10]

The application, among others, of the "clearly erroneous" guideline to the district court's order denying recusal is not only appropriate, it does nothing to detract from the separate standard employed by the district court when it initially determined that the district court judge's impartiality could not be reasonably questioned pursuant to 28 U.S.C. § 455(a). However, petitioners improperly seek to merge these distinct concepts.

The court of appeals stated that "while reasonable minds might draw different inferences from the facts alleged in the motion for recusal, the court finds that the district court's order denying recusal was not clearly erroneous . . ." (1a). Petitioners then disingenuously

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[10]The Ninth Circuit will characterize a ruling as "clearly erroneous" only if it is "firmly convinced" that the district court's ruling on a question of law was incorrect. A comparable standard is used by the Second Circuit when it applies a "firm conviction" test. *See e.g., In re IBM*, 687 F.2d 591, 600 (2d Cir. 1982). The Seventh Circuit employs a comparable "clear error" test. *Maloney v. Plunkett*, 854 F.2d 152, 154 (7th Cir. 1988). The Eleventh Circuit utilizes a "clear error" of judgment standard. *United States v. Kelly*, 888 F.2d 732, 745 (11th Cir. 1989).

compare the court of appeals decision with the statutory language of 28 U.S.C. § 455(a) that a judge must disqualify himself if "his impartiality might reasonably be questioned."

While 28 U.S.C. § 455(a) clearly refers to "impartiality" being "reasonably" questioned, the court of appeals' remarks are directed to whether "reasonable" minds might differ as to "inferences" to be drawn from factual allegations. The court of appeals did not say that reasonable minds might draw different inferences as to whether the district court judge was *impartial* or not.

In *In re United States*, 666 F.2d 690, 695 (1st Cir. 1981) the court of appeals for the First Circuit focused on the range of discretion properly available to the district court when assessing whether a reasonable person would doubt a judge's impartiality:

> We recognize that the analysis of allegations, the balancing of policies, and the resulting decision whether to disqualify are in the first instance committed to the district judge. *And, since in many cases reasonable deciders may disagree, the district judge is allowed a range of discretion.* The appellate court, therefore, must ask itself not whether it would have decided as did the trial court, but whether that decision cannot be defended as a rational conclusion supported by reasonable reading of the record. Moreover, in this case, which comes to us by a petition for mandamus, the party seeking the writ of mandamus must show a 'clear and indisputable' right to relief.' (Citations omitted, emphasis supplied).

Accord, In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1312 (2d Cir. 1988), *cert. denied, sub nom, Milken v.*

S.E.C., 490 U.S. 1102 (1989). This is precisely the approach taken by the court of appeals in this case.

The court of appeals concluded that the district court was not clearly erroneous when it *declined* to hold that the facts alleged gave rise to a situation where "a reasonable person with knowledge of all the facts would conclude that the judges impartiality might reasonably be questioned." *United States v. Studley,* 783 F.2d 934, 939 (9th Cir. 1986). To the contrary, the district court found in each case that the allegations did not support a showing of extrajudicial bias (see district court's comments regarding allegations that Judge Ideman accused *both* parties in the *Aznaran* case of flagrant misconduct, disregard of the Court's orders and outrageous litigation tactics, (25a-26a); that Judge Ideman concluded that the *undisclosed* use of a court reporting service owned by Scientologists who were substantial financial contributors to petitioners' International Association of Scientologists in the *Scott* case required "looking into" (26a-27a); and the framed *Time* magazine cover alleged to be hanging on a wall somewhere in the court's staff's area ("I simply don't think *anybody* can draw *any inference* that there is some extra-judicial bias for the fact that is there, and I don't make that inference" (emphasis added) (27a-28a)).[11]

The district court did not equivocate in holding that no one could draw an inference of bias based on the record

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[11]References to the district court's conduct in *other* cases are not appropriate grounds for recusal in *this* case. *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984) (A judge's prior adverse ruling against a party in one case is not sufficient grounds for recusal of that judge by the same party on a second case). For that reason real parties in interest in this case leave it to the real parties in interest in the other cases involved in this petition to address the claims made by petitioners in those cases.

before it. While the court of appeals conceded that different *inferences* could be drawn from the factual allegations, it did not conclude that the district court was clearly erroneous in holding that no inference could be drawn giving rise to a reasonable person concluding that the district court judge's impartiality might reasonably be questioned. The same was true in *In re Drexel, supra*, 861 F.2d at 1313.

> We disagree with our dissenting colleague's statement that recusal based on an appearance of impropriety under § 455(a) 'requires us to judge the situation from the viewpoint of the reasonable person, and not from a purely legalistic perspective.' Like all legal issues, judges determine appearance of impropriety — not by considering what a straw poll of the only partly informed man-in-the-street would show — but by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.

Moreover, in matters involving recusal, this Court has said:

> In considering whether a remedy is appropriate, we do well to bear in mind that in many cases — and this is just an example — the Court of Appeals is in a better position to evaluate the significance of a violation than is this Court. Its judgement as to the proper remedy should thus be afforded over due consideration.

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988).

III.

THE DISTRICT COURT'S ORDER HOLDING THAT THE PETITIONERS HAD FAILED TO ESTABLISH THAT THE DISTRICT COURT JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED OR THAT HE HAD A PERSONAL BIAS OR PREJUDICE CONCERNING PETITIONERS WAS NOT CLEARLY ERRONEOUS

Petitioners stress that the district court erred in relying upon *United States v. Grinnell Corp.*, 384 U.S. 563 (1966). *Grinnell* involved a motion for disqualification under 28 U.S.C. § 144 on the ground of personal bias and prejudice. In such a case the alleged bias and prejudice "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *Id.* at 583. The district court's reliance here upon *Grinnell* was required by the nature of petitioners' accusations. Petitioners did not rely on the general terms of 28 U.S.C. § 455(a) that the district court judge's "impartiality might reasonably be questioned;" but rather, on the specific allegation that the district court judge's impartiality might reasonably be questioned *because* he allegedly had "a personal bias or prejudice" towards them requiring recusal under 28 U.S.C. § 455(b)(1).

Courts in the Ninth and other Circuits agree that: "decisions interpreting section 144 are also controlling in the interpretation of the bias and prejudice language in section 455(b)(1)." *See, United States v. Conforte*, 624 F.2d 869, 880 (9th Cir. 1980), *cert. denied*, 449 U.S. 1012 (1980) and cases set forth therein. Moreover, § 455(b)(1) has been interpreted as providing a specific example of the kind of situation which might question a judge's impartiality under § 455(a). Thus, when the sole

ground for recusal is alleged bias or prejudice, an independent ground for recusal under 28 U.S.C. 455(a) is not created. Instead, the single question remains whether the district court erred in refusing to order recusal for personal bias or prejudice pursuant to either section 455(a), or (b)(1), with the same substantive standard applied to both sections. In that regard, recusal for alleged bias or prejudice is required only if such bias or prejudice "is directed against a party and stems from an extrajudicial source." *United States v. Sibla*, 624 F.2d 864, 869 (9th Cir. 1980).[12]

Pursuant to these principles, the district court was correct in applying the standard set forth in *Grinnell* in analyzing petitioners' bias and prejudice claim brought under § 455(a) and § 455(b)(1).[13] Thereafter, once hav-

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[12]An exception to the rule that prejudice under § 455 (a) must stem from an extrajudicial source is when the "judge's remarks in a judicial context manifest such pervasive bias and prejudice that it constitutes bias against a party." *United States v. Monaco*, 852 F.2d 1143, 1147 (9th Cir. 1988), *cert. denied*, 488 U.S. 1040 (1989). In that regard, the extent of bias or prejudice necessary would be "an attitude or state of mind that belies an aversion or hostility of a level or degree that a fair minded person could not entirely set aside when judging certain persons or causes. It is an animus more active and deep-rooted than an attitude of disapproval toward certain persons because of their known conduct . . ." *United States v. Conforte*, *supra*, 624 F.2d at 881. No such finding was made in this case.

[13]". . . [S]ubsection (a) is designed to cover contingencies not foreseen by the draftsmen, who set out specific grounds for disqualification under subsection (b). This interpretation is consistent with the legislative history, which describes (a) as a 'general, or catch-all provision.' H. Rep. No. 1453, 93rd Cong., 2d Sess, *reprinted in* [1974] U.S. Code Cong Admin. News 6351, 6354. Subsection (a) was described as establishing an objective standard which required disqualification 'if there is a reasonable factual bias for doubting the judge's impartiality.' *Id.* at 6355. Subsection (b) on the other hand,

ing concluded that there was no bias or prejudice pursuant to § 455(b)(1) disqualification, and thereby eliminating the sole basis upon which petitioners' § 455(a) disqualification claim was based, the district court properly denied petitioners' motion for recusal.

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was addressed to specific instances 'which are in addition to the general standards set-up in section (a)' *Id.* When these specific instances are present, the inquiry must proceed under subsection (b), rather than subsection (a) . . ." *United States v. Conforte, supra,* 624 F.2d at 880-881.

CONCLUSION

For all the reasons set forth above, the petition for writ of certiorari should be denied.

Dated: April 23, 1992 Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 91-70659
D.C. No. CV-88-1786-JMI
(Central California)
December 4, 1991

CHURCH OF SCIENTOLOGY INTERNATIONAL, *et al.*,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

and

VICKI J. AZNARAN, *et al.*,
Real Parties
In Interest.

Before:

FARRIS, POOLE AND NORRIS,
Circuit Judges

ORDER

While reasonable minds might draw different inferences from the facts alleged in the motion for recusal, the court finds that the district court's order denying recusal was not clearly erroneous, and further that the harm alleged in the petition is correctable on appeal. *See Bauman v. United States Dist. Ct.*, 557 F.2d 650 (9th Cir.

1977); *In re Cement Antitrust Litigation (MDL 296)*, 699 F.2d 1297, 1302 (9th Cir. 1982). Accordingly, the petition for writ of mandamus is denied. The motion to stay is denied as moot.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 91-70659
D.C. No. CV-88-1786-JMI
(Central California)
January 30, 1992

CHURCH OF SCIENTOLOGY INTERNATIONAL, *et al.*,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

and

VICKI J. AZNARAN, *et al.*,
Real Parties
In Interest.

Before:

FARRIS, POOLE AND NORRIS,
Circuit Judges

ORDER

The petition for rehearing and suggestion for en banc review are denied. No further filings will be accepted in this closed docket number.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 88-1786 JMI
November 22, 1991

VICKI J. AZNARAN AND RICHARD N. AZNARAN,
Plaintiffs,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, *et al.*,
Defendants.

ORDER DENYING MOTION TO RECUSE THE HONORABLE JUDGE JAMES M. IDEMAN

The Motion of defendants CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., to recuse the Honorable Judge James M. Ideman came on for hearing regularly on October 25, 1991.

Having reviewed the papers filed in connection with this matter, having heard oral argument, and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the Motion of defendants CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., is DENIED.

IT IS SO ORDERED.

DATED: November 22, 1991

J. Spencer Letts
United States
District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 85-711-JMI (Bx)
CV-85-7197-JMI (Bx)

RELIGIOUS TECHNOLOGY CENTER, *et al.*,
Plaintiff(s),

v.

ROBIN SCOTT, *et al.*,
Defendant(s).

RELIGIOUS TECHNOLOGY CENTER, *et al.*,
Plaintiffs,

v.

LARRY WOLLERSHEIM, *et al.*,
Defendants.

AND RELATED COUNTERCLAIMS

ORDER DENYING PLAINTIFFS' MOTION FOR STAY

ORDER DENYING PLAINTIFFS' MOTION FOR REVIEW OF THE SPECIAL MASTER'S DISCOVERY ORDER DATED 7/25/90

IT IS HEREBY ORDERED:

1. Plaintiffs RELIGIOUS TECHNOLOGY CENTER, et al.'s (hereinafter "Plaintiffs") motion for a stay and suspension of discovery and a stay of the objections to the Special Master's Discovery Order pending adjudication of motions for partial summary judgment is hereby DENIED.

2. Plaintiffs' motion for review of the Special Master's Discovery Order dated 7/25/90 is hereby DENIED.

3. Plaintiffs contend that discovery on the antitrust and authorship issues should be stayed and suspended until the summary judgment motions addressing the claims and defenses regarding those issues are resolved. They argue that discovery on those issues has been extensive and intrusive and promises to continue to be so. Plaintiffs assert that compliance with discovery requests and discovery orders regarding those issues now would be wasteful if summary judgment motions are granted and they claim that if the summary judgment motions are denied, the delay a stay would occasion would be minimal and discovery could continue from that point.

4. As to the motion for review of the Special Master's Order, Plaintiffs contend that Defendants have failed to demonstrate that the documents sought are relevant, that Defendants cannot get financial discovery for punitive damage claims, that Plaintiffs' financial records are specifically protected by California law, and that the Special Master's Order which permits discovery of financial records because of their alleged relevancy to Defendant's antitrust claims is not supported by fact or law.

In the present case, Plaintiffs have been extremely evasive with respect to their discovery obligations. This appears to be yet another tactic utilized by Plaintiffs to delay the progress of this case which was first filed in 1985. Moreover, Plaintiffs are already in violation of several Court Orders which have directed that Plaintiffs respond to Defendants' pending discovery requests. In fact, discovery responses by Plaintiffs in this case have either been incomplete or inadequate. In light of the foregoing, the Court hereby DENIES Plaintiffs' motion for a stay and the Court also hereby DENIES Plaintiffs'

application for review of the Special Master's Discovery Order dated 7/25/90 and hereby ORDERS the parties to comply with the discovery ordered by the Special Master. IT IS SO ORDERED.

DATED: August 12, 1991

JAMES M. IDEMAN

JAMES M. IDEMAN
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE J. SPENCER LETTS,
PRESIDING
UNITED STATES DISTRICT COURT JUDGE

CV-90-2042-JMI

CHURCH OF SCIENTOLOGY, *etc., et al.*,
Plaintiffs,
v.
UNITED STATES OF AMERICA, *etc., et al.*,
Defendants.

TRANSCRIPT OF PROCEEDINGS
Friday, October 25, 1991
Los Angeles, California

Motion to Recuse Judge Ideman

Terry Kramer, CVR
Official Reporter
United States District Court
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For the United States of American:

Lourdes Baird
United States Attorney
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Los Angeles, California 90012

BY: Richard Stack
Assistant United States Attorney

Los Angeles, California, Friday, October 25, 1991

2:10 o'clock p.m.

THE CLERK: CV-90-2042-JMI, Church of Scientology versus United States of America; CV-85-711-JMI, Religious Technology Center versus Robin Scott; CV-85-7197-JMI, Religious Technology Center versus Larry Wollersheim et al.; and CV-88-1786-JMI, Vicki Aznaran versus Church of Scientology, et al.

MR. COOLEY: Earle C. Cooley for the moving parties, Your Honor.

MR. DRESCHER: William Drescher for the moving parties.

MR. MOXON: Kendrick Moxon, Your Honor, also for the moving parties.

MR. FAGELBAUM: Jerry Fagelbaum, Your Honor, representing defendant and opposing party David Mayo and Church of the New Civilization.

MR. BRIGHT: Gary Bright representing all defendants and counterclaimants.

MR. ELSTEAD: And John Elstead for Richard and Vicki Aznaran.

MR. STACK: Your Honor, Richard Stack, Assistant United States Attorney, representing the United States in opposition to the motion in the 90-2042 case.

THE COURT: I'm not sure that there is anything to be added at a hearing, so I think the first question is, does anybody have anything to add to the papers they've already filed.

The second question of course, if so, why?

MR. COOLEY: I'm sorry, Your Honor; I didn't hear you.

THE COURT: The second question of course, if so, why, but if anybody does, I will expect it to be in addition. I can read and have read. If there is anything to be added, I would hear it.

MR. COOLEY: Well, I'm not entirely certain that it's in addition to, but I'd like to highlight some of the aspects of —

THE COURT: You see, if I let you highlight aspects, everybody else is going to highlight aspects, and we'll have a very long hearing to see if I've been able to understand what I've read, which right now I have no reason to believe that I didn't understand what I read.

MR. COOLEY: Well, I'd like to address that *Time* magazine article, Your Honor, because I think it's crucial.

THE COURT: No, it's not.

MR. COOLEY: And I think in and of itself, it mandates —

THE COURT: Sir?

MR. COOLEY: — recusal.

THE COURT: I'm sorry.

MR. COOLEY: Am I not to be heard; is that the position that I'm in?

THE COURT: If you're going to tell me things that you've already told me, that's the answer, you're not going to be heard.

MR. COOLEY: What I'm here to tell you is that — the tacking of that article alone on the wall of Judge Ideman's Chambers mandates recusal.

THE COURT: I understand your position.

MR. COOLEY: I don't know if you've had the opportunity to read the article itself.

THE COURT: No, of course not.

MR. COOLEY: Well, the article itself —

THE COURT: Stop; that is enough. I will not hear it. If you understand English, you should now understand that I'm not going to hear that.

MR. COOLEY: Why?

THE COURT: Becuase you have told me more about that article already than I wish to know.

MR. COOLEY: Well, It seems —

THE COURT: You don't know, and I don't know, who hung that picture, why they hung it, or what it meant. It's a picture of a cover of a magazine.

I don't know why it is there, but you may not draw inferences about me from anything you can find sitting in my chambers.

MR. COOLEY: I respectfully submit that that simply is not so.

THE COURT: But that is going to be a matter that is going to be up to the judge, and I don't agree with you, so I don't want to hear what's in the article.

The article is not pasted on his wall. The *Time* magazine cover is someplace in his chambers, I take it. My suspicion is that if it were in his office, you would have told me that, so I suspect it's not there.

MR. COOLEY: It's in his — the working part —

THE COURT: You have told me —

MR. COOLEY: — of his chambers —

THE COURT: Wait a minute; stop.

MR. COOLEY: He must —

THE COURT: Stop.

I will have a marshal escort you out of here if you don't stop when I tell you to stop.

MR. COOLEY: Well, I am not going to. If you want the marshal to escort me out —

THE COURT: Ms. Webb, will you call the marshal.

(Mr. Cooley exited the courtroom.)

THE COURT: Does anybody have anything to add to their papers?

MR. DRESCHER: No, Your Honor, we don't. We believe the showing has been made.

THE COURT: Thank you.

Does any defendant have anything to add to their papers?

MR. STACK: I certainly do, Your Honor.

THE COURT: Make it an addition. I'm going to be just as difficult with you as I was with him. It will be in addition.

MR. STACK: Yes, it is an addition, Your Honor.

First of all, as far as the alleged evidence of the *Time* magazine hanging in Judge Ideman's Chambers, defendant objects to that as hearsay. There is no support whatsoever in the plaintiffs' reply for this proposition.

They refer to a declaration of a Ms. Ava Chromoy, who advised the personnel director of Bowles & Moxon that

she had delivered papers to Judge Ideman's Court, and that she had observed the *Time* magazine article in his chambers at that time.

First of all, that's hearsay within hearsay, whatever Ms. Chromoy advised the personnel director of Bowles & Moxon.

Secondly, I don't see a declaration of the personnel director, even if the Court would entertain that evidence.

Thirdly, an exhibit to the plaintiffs' reply refers to this declaration of Ms. Ava Chromoy that was attached as an exhibit to the recusal motion in the Aznaran case, and that declaration itself is not attached to the reply in case No. 90-2042.

I'm objecting on the grounds that there's no evidence before the Court to conclude that a picture of the *Time* magazine article is in Judge Ideman's Chambers.

I haven't seen the papers in —

THE COURT: To be candid, as I sit here, I don't know that I'm bound by purely evidentiary things if I were to choose to consider them.

If believed there was anything to be considered just by the existence of that picture, assuming it's true for the moment, I guess I'd have to consider that.

Does anybody choose to instruct me?

I don't think I'm limited to the Rules of Evidence in the things I would consider.

MR. STACK: I believe you can consider, but of course if it's hearsay, it's less reliable.

THE COURT: I would assume, because it's so easily checked, that it must be true; if it isn't true, it occurs to

me the defendants would probably find out it's not true and tell me that.

Without being difficult about it, different things capture different people's opinions, and people have things they like, things that tickle their sense of humor. There are a lot of reasons why people wear the things they wear, display the things they display.

I just simply think it's inappropriate to draw inferences about any individual who works in those chambers because there is something hanging on the wall in those chambers that I don't know how they got there. I can't get there from here, but if I thought it was relevant, I would think it was appropriate to consider it.

MR. STACK: There's one other point in the plaintiffs' reply that I would like to address also, Your Honor, and that pertains to an alleged relationship, social and personal relationship between one of the defendants that Charles Jeglikowski —

MR. ELSTEAD: I'm sorry to interrupt.

Can I ask a favor, that rather than refer — because there's a mixture of defendants and plaintifs on either side — if we could refer to the parties by name, just for purposes of the record?

THE COURT: Sure, I don't see why we can't do that or why we shouldn't do that.

MR. STACK: Okay.

With respect to the Church of Scientology, California versus Sandra Baker case, one of the defendants in the case is Charles Jeglikowski. He was named as a defendant in the plaintiffs' first amended complaint, which I believe was filed in early 1991.

There's a couple of things. I don't think his personal relationship is relevant, first of all, because he's not a proper defendant in this case.

He is an IRS attorney, and under the rule of Frye versus Milerogno (phonetic), a recently decided Ninth Circuit case, such tax attorneys as Mr. Jeglikowski have absolute immunity, and he's not a proper party defendant to begin with.

And the government did file a motion to dismiss Defendant Jeglikowski. I don't have the exact date. I believe it was —

THE COURT: Has it been granted?

MR. STACK: — in June.

No, it is still pending, Your Honor. It has been fully submitted, but it is pending.

Secondly, the fact that Mr. Jeglikowski and Judge Ideman allegedly worked in the same units of the Army. I don't see how it's relevant that they know each other. I believe the main point is that Mr. Jeglikowski should not even be in this case.

You know, I'm not sure why the plaintiffs —

THE COURT: I can't even address that.

All I can address — and the reason we got to where we are — again, the wisdom of having a hearing is I think more in doubt now than it was — the papers, as filed, in my judgment, required a response, so there is a response now.

I think the papers raised the questions that they intended to raise adequately. In my judgment you could not rule on them without some response. I've now seen a response.

I didn't want to, in a case of as much apparent sentiment as this case, simply rule without giving anybody an opportunity to be there, so I wanted to see if there was anything anybody wanted to add.

My expectation, frankly — but maybe not an expectation of great value — that probably, since the *Time* magazine article business came in a reply brief, the defendants might want to address it.

I thought it was possible that the Church of Scientology might have something that's either new or different, but I had no great expectation of that.

The *Time* magazine thing, while I rather thought that the defendants might want to address it, it didn't seem then and doesn't seem now anything you can draw any inferences from.

The reason for having a hearing is simply to have everybody there for a last clear chance, but I thought the papers spoke for themselves when filed, and the opposition spoke for themselves when filed.

I'm prepared to rule unless there is something somebody has that's new that should be added to it.

MR. STACK: I have nothing further to say, Your Honor.

MR. MOXON: I would like to briefly respond to the Court's question. The Court actually had a pending question with respect to that *Time* magazine article which I think we can clarify here as to why there's some significance.

THE COURT: I don't think I asked that question; I'm sorry.

MR. MOXON: The question I would respond to, Your Honor, is why you believed that was relevant, why you —

THE COURT: No, I didn't; I'm sorry.

What I have said consistently — and I haven't asked you, and there seems to be a high degree of desire to say on the record things about that article, and I don't choose to hear them.

What I have said is that a picture hanging on a wall that nobody has described for me what wall it's on, who put it there, why it's there, or any of those things, I don't think you can draw any inference from the existence of that picture because people do things for different reasons.

In my judgment it would be entirely inappropriate to draw the inference, any inference, from the mere existence of a *Time* magazine cover in a frame on any wall anywhere. It's not enough to draw an inference from. And I don't care what the underlying article said.

MR. MOXON: I see the Court's position. I think I fully understand it now.

In that case I have one additional matter to bring to the Court's attention, which wasn't specifically addressed, and that is that the article itself, just the cover, not the article but the cover that's hanging in Judge Ideman's Chambers, is a parity of the book *Dianetics,* The Modern Science of Mental Health, which was the foundational book of the Scientology religion. There are many millions of copies published.

On the *Dianetics* book there's a picture of a volcano and it says "Dianetics" at the top. This is a parity that has the volcano. Growing out of it are octopus arms and "Cult of Greed." This octopus arms of Scientology being

this octopus as the cult of greed is what's hanging in the chambers.

Now, Judge Ideman, obviously, as does this Court and as any Court, controls the employees in his chambers. You're right, Your Honor, we don't know exactly what wall it was hanging on.

We have a declaration from an eyewitness who testified, and her testimony is unrefuted that this highly offensive photograph, essentially, this picture, is hanging there.

Now, if this was something like a swastika, I don't know if we'd be having this discussion.

THE COURT: I've heard that argument, you've made that argument. I would respond — and this is as far as I'm going to go to this — that case has generated a lot of paper, it's caused Judge Ideman and his staff to do a lot of work, it is a case that is known to exist — *Time* magazine is a widely circulated, well known publication — a case that has generated, I presume, a lot of attention and a lot of work in that office, made its way to the cover of *Time* magazine, and somebody undertook to take that cover and put it on the wall.

There is no question that cover displays some notoriety. It doesn't, in my judgment, display any attitude in and of itself of anybody who put it there.

Time magazine has independent significance. This lawsuit in that chambers, if it doesn't occupy a lot of attention, I'd be surprised.

I don't think you can infer from *Time* magazine, which is independent, as I said, its portrayal of whatever it was chosen to portray, I don't think you can take that as evidence of any state of mind for anybody that chose to

hang it there. I simply don't believe that, so I don't credit it for that.

MR. MOXON: I see the Court's point.

As far as certainly we don't know what Judge Ideman's state of mind is. He hasn't filed anything in response, although it's my understanding that the papers have all gone to him.

THE COURT: He has no opportunity to —

MR. MOXON: No obligation to, of course.

THE COURT: Not obligation, opportunity.

MR. MOXON: The point perhaps isn't then, Your Honor, what inference should be drawn, but in the standard of an extremely serious case, three cases that Judge Ideman is presiding over, whether or not there's an appearance, whether or not all these matters, Mr. Jeglikowski, the *Time* magazine, the other comments that have been made, whether or not they raise the appearance which should cause the Court in the position it's in with having to make very important decisions with respect to it, to millions of individuals who have faith in this religion, whether or not it wouldn't be better for the administration of justice to have some other judge preside who is not under this cloud, that's the only point, Your Honor.

THE COURT: I understand the point, and I don't think so, because these cases have been before Judge Ideman for a long time, and there is the corresponding consideration that if it is true that what the Church of Scientology doesn't like about Judge Ideman is that reaction to the evidence that they've put before him, and that's why they want a different judge, the appearance of impropriety to the other people of allowing a change at this late stage is at least as high.

The law is clear that it has to be evidence and reason for bias that pre-exists the case itself, it cannot be things that come out of the case itself.

With a case that's gone on for a long time, there is always reason to ask the question if the real reason, if people want a change of judge, isn't because they have some inkling about what the judge thinks about what he's already seen about the case.

That is not an appropriate basis for a recusal.

MR. MOXON: I agree, Your Honor; however, in this case we don't know how Judge Ideman acquired the viewpoint he has with respect to Scientology —

THE COURT: Indeed, I don't think you know that he has a viewpoint.

MR. MOXON: No.

Again, Your Honor, we haven't deposed Judge Ideman, and Judge Ideman has not spoken as to it, but the inferences here are substantial, there are so many of them that it raises a really substantial question.

It's that question, if the Court looks completely objectively at all these facts, shouldn't another judge sit on these cases that would demonstrate that the United States District Court has placed itself on a higher standard than anyone, that the United States District Court has demonstrated that it will not allow any even potential of impropriety or bias to enter into one of these cases.

THE COURT: I understand your position, and I'm now finished hearing argument. I will, before I address the decision, say again what I just said.

After a case has gone on for a long time, then the appearance of impropriety of permitting a judge to be

replaced, if there is insufficient objective reason for it, is a greater appearance of impropriety than refusing to have him be replaced.

We are left with the issue, is the objective reason that you've asserted for believing that he has some bias sufficient to support a conclusion that he does.

MR. MOXON: I'm not quite sure I understood, Your Honor.

THE COURT: It's just what I said.

MR. MOXON: We didn't know of course any of this until the case happened because there was no communication with Judge Ideman —

THE COURT: I understand.

The question is, are the things you have asserted sufficient to believe there is a bias that doesn't result from the conduct of the case.

MR. MOXON: Yes.

THE COURT: And that question hasn't changed. That's the question you posed by your papers, that's the question they addressed in their answer, and that's the question that I propose to decide.

MR. MOXON: I wish we could resolve this, the matter of some of the things that have come in. They clearly don't relate to the case itself, such as —

THE COURT: We're not going to hear any of those things. They're in the papers and I'm not going to hear more about them.

I'm not going to use the gavel again. There are other ways to not have that kind of conversation. I chose to use the gavel the first time.

MR. MOXON: Thank you, Your Honor.

THE COURT: All right.

MR. RATHBUN: Your Honor, just address one point, you stated that you can't draw inferences, but in — matter of fact from what you've stated, it's clear that you have drawn some inferences.

You stated that *Time* magazine is independent, and you also stated —

THE COURT: No, I didn't say that. I said it has independent significance.

MR. RATHBUN: Independent — how's that?

THE COURT: *Time* magazine is an entity, it's a magazine with a large circulation. It has independent significance that has nothing to do with this lawsuit. That's what I said.

And I submit to you that you're exhibiting your own bias when you hear me say that, because I didn't say that.

MR. RATHBUN: No, I understand what you're saying now, but the same could be stated about —

MR. BRIGHT: May I interrupt?

THE COURT: Yes, you may.

MR. BRIGHT: The defendants are objecting to Mr. Rathbun, who is not an attorney, addressing the Court.

THE COURT: Sustained.

You may not. I didn't realize that.

MR. RATHBUN: Can I just make —

THE COURT: You may not; you may not. I'm sorry.

MR. RATHBUN: The other —

THE COURT: You will stop, or I'll —

May I have him escorted from the Court.

(Mr. Rathbun removed.)

THE COURT: You will now have a ruling.

As I've indicated, the law is clear, the bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. That is the holding in the case of *United States versus Grinnell.* That is the issue to be decided.

The things in the case of Aznaran versus Church of Scientology, as I understand the allegation, the thing that is thought to demonstrate the bias is that Judge Ideman accused both parties of flagrant misconduct, blatant disregard of the Court's orders and outrageous litigation tactics.

The Church of Scientology, as I understand it, largely undisputed, says that the blatant disregard of the Court's order was not attributable to it.

The flagrant misconduct, that's sort of an undefined phrase, and outrageous litigation tactics is an undefined phrase, too.

To the extent that the blatant disregard of the Court's orders was confined to the other party, the problem, as I see it, is simply in the use of the conjunctive "and."

The conclusion drawn that the barrage of paper and the barrage of orders that he drew, to call it outrageous litigation tactics and/or flagrant misconduct, even if this Court were to disagree with those conclusions, which I am not saying I do, I'm simply saying, if I did disagree with

those conclusions, they would not, in my judgment, show any bias that results from anything but the judicial process.

I don't know whether that sort of thing that has happened at this hearing has happened in Judge Ideman's court. It has not been alleged, but I would have considered it flagrant misconduct.

I don't know whether I would call it outrageous litigation tactics or not, but I cannot say that it is possible, based on the record before me, to conclude that his statements that both parties had engaged in flagrant misconduct, blatant disregard or outrageous litigation tactics represent a pre-existing bias that didn't result from the judicial process. I would deny the motion in that case.

I'm considering altogether, so I would put them altogether.

The next one is Religious Technology Center versus Robin Scott. There, as I understand the issue, Special Master Kolts, who had not received a transcript from a June 19 hearing, noted that fact and said that he had learned that the reporter and her husband were major financial contributors to Scientology, and that he had a doubt on the verification of disinterest.

In my judgment, the subsequent conduct by Judge Ideman did not accept at face value that there was a problem, he simply left the question open and said that it did require looking into.

I don't disagree with that conclusion. That is a conclusion again that he drew in the course of the litigation based on what he had seen of the entire litigation and the particular fact, and having said no more than, so far as I can tell from the record, that it should be looked into, I

cannot conclude that that evidence is a pre-existing bias or any other bias that arises from outside the proceeding. I would therefore deny the motion to recuse in all cases based on those two sets of factors.

The third one is Church of Scientology of California versus United States, Sandra Baker. I must say, I'm not awfully persuaded by the government's argument in that case, but since the Scientology position is basically a mirror of the other two positions, without the other two, this one must fall, and I'm not persuaded by the other ones, so I would deny the motion to recuse in that case.

I think I have spoken at more than sufficient length about the *Time* magazine thing. I don't choose to dignify this proceeding with anything that's in the article. The article is what it is. Whether it is true on its own terms or whether it's not true on its own terms, I don't care.

I haven't read that article, and while I did read the characterizations of that article that were made by the Church of Scientology in this proceeding, I didn't really pay a lot of attention to the opposition to it, so that what I know about that article is what the church has told me about that article.

The reason for that is because as I have said, in my judgment, the case in Judge Ideman's Chambers I would expect to be considered a major case.

If the subject of a major case in a judge's chambers appears on the cover of *Time* magazine, I simply don't think anybody can draw any inferences that there is some extra-judicial bias from the fact that that is there, and I don't make that inference.

And it's not in my chambers, and I don't think you could draw that inference if it were in my chambers. I

don't think there is any inference that you could draw from that.

And that is an article that I did not read. Although I did read it for purposes of considering this motion, I don't think it's content can fairly be ascribed as being a reflection of the state of mind about this party just because that cover is someplace in Judge Ideman's Chambers.

I don't know how it got there, I don't know who put it there. I don't know that it's there, but I'm accepting as true for the purpose of this ruling that it is there at this very minute. I don't know that it is, nobody said that; it may not be.

I assuming that it was there for purposes of decision. I'm assuming that it is there, and I still don't think you can draw any inference from that fact as to Judge Ideman's state of mind or the state of mind of anybody in his chambers.

That is a ruling, and unless there is something further —

MR. FAGELBAUM: The only other matter, Your Honor, is the question of the appropriateness of sanctions in this regard as we set forth in our papers. We will not reargue it here.

This is really the second motion to recuse Judge Ideman made by the plaintiffs in the RTC, Scott and Wollersheim cases.

In essence, they repeat what they've said before and they only add the cosmetic element of the *Time* magazine article.

We think, under the circumstances, because of the repetition, because of the prior rulings by the Ninth

Circuit and by Judge Hatter on this related matter, the repetitive nature of this filing and the vacuousness of its content would permit the Court to issue appropriate sanctions.

THE COURT: Well, does anybody want to respond to that issue?

MR. DRESCHER: I'll respond briefly to that, Your Honor.

I think it's clear that the Court has read the papers, and I didn't hear anything in the Court's analysis of the arguments to suggest that it was frivolous.

The Court disagreed, the Court —

THE COURT: Let me speak to that so you can understand. I really didn't come out here thinking about the sanctions issue.

I was troubled and am troubled by the fact that the *Time* magazine article was not drawn to my attention until the reply brief. That I didn't understand well.

MR. DRESCHER: I can explain that.

THE COURT: And then I was even more troubled at what appeared to be a very conscious and strong attempt to force discussion of that article into this proceeding.

If it is true that there is nothing new here — and that I haven't analyzed it — if it is true that there is nothing new here but that *Time* magazine article, then I think the question of sanctions has to be considered with care.

MR. DRESCHER: If I may address those points one at a time, I think I can give the Court some guidance.

THE COURT: Sure.

MR. DRESCHER: The reason that the frame and cover of *Time* magazine did not appear in any of the papers until the series of replies was simply that the moving parties were unaware of it until the interim between the filing of the initial papers, the date —

THE COURT: So that's easy enough.

MR. DRESCHER: — the date of Ms. Chromoy's declaration and the date that she references in her declaration as to when she made the information known establishes that.

I don't know it offhand, but it is after the moving papers —

THE COURT: I'll accept that for the moment.

So then we just ignore that entirely, and then the question is raised, is there in fact anything new here but that.

MR. DRESCHER: Well, plainly there is.

And I can just give the Court something like a headline version of things the Court has read so the Court will see that there are new things.

For example, the entire colloquy that lead to the filing of this motion in the RICO cases, the Scott case and Wollersheim consolidated cases, occurred long after the matters that are addressed in the first motion to recuse which was brought several years ago.

It erupted — frankly, that's the word — over the issue of a letter that Mr. Fagelbaum sent this summer, so to badly characterize this as simply a regurgitation, that's just not true.

These are events that took place within the last few weeks in respect to that case, Mr. Fagelbaum's case. And

I think if the Court simply recalls the way it's laid out, there's reference to the earlier motion, there was certainly no effort to hide or disguise it. There is a mention to some of its content.

The motion to recuse in those consolidated Scott and Wollersheim cases runs directly from the incident that occurred in August or September — I can't remember which, but long after —

THE COURT; If I reconsider, I'll give your another opportunity to reargue. Right now I'm not going to do sanctions. I'll look at it again. If I reconsider, we'll have to have further opportunity to argue.

I'm going to say this — and the record will reflect it — in my judgment, by the *Grinnell* standard — the Supreme Court of the United States — this was a very, very weak motion.

Were it to be done a third time, I would expect sanctions to be issued because I am very doubtful that this motion should have been filed at all.

The *Time* magazine thing, I really don't think people ought to differ about its significance, but this was filed long before, as you put it, you knew about that.

The other grounds are very, very weak, very weak, and were another such motion ever to be filed with no stronger grounds that those, if it got to me, I know I would sanction for it, but that hasn't happened yet.

MR. DRESCHER: The Court's comments are understood, and I'm not going to argue —

THE COURT: That hasn't happened.

What I will do, I will look again. Right now I'm accepting at face value what you said. I'll look again at the papers.

If I reach a different conclusion that the one I've tentatively reached here, that while this was weak, without some sort of prior warning that a similar one filed in the future would result in sanctions, I don't think it's appropriate to do it. If I change my mind about that, we'll start all over again.

MR. DRESCHER: All right.

THE COURT: And I don't expect to change my mind.

Right now, I looked at it, I treated it as a serious matter. I didn't come to the bench saying, that's an outrage, that ought to be sanctioned.

And while I was obviously made uncomfortable by some of the things that happened here, I haven't changed my judgment about it, I don't think. I know I haven't as I sit here, changed my judgment about the motion itself. If I do, I'll let you know.

MR. DRESCHER: I'm sure by checking those facts it will allay any concerns the Court may still have.

THE COURT: Anything else for today; if not, we'll be in recess.

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPTION, REPORTED TO THE BEST OF MY ABILITIES, OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

_____

TERRY KRAMER
CERTIFIED VERBATIM
REPORTER

_____

DATE